

May 13, 2014

Michelle Culp
1616 8th Avenue
Sacramento, CA 95818

Re: Your Request for Informal Assistance
Our File No. I-14-051

Dear Ms. Culp:

This letter responds to your request for advice regarding the post governmental employment restrictions of the Political Reform Act (the “Act”)¹ and the contracting prohibitions of Government Code Section 1090. We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by the common law and Public Contract Code Section 10411.² Please note that because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), and this letter is based on the facts presented. In addition, the Commission does not provide advice on past conduct.

Since you ask only general questions about potential government decisions that could arise under the Act and Section 1090, we offer only informal assistance. For purposes of the Act, informal assistance does not provide the requestor with the immunity set forth in Sections 83114(a) or (b). (See Regulation 18329(b)(8)(C) and (c)(1) and (3).) Also, for purposes of

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Public Contract Code section 10411, subdivision (a), applicable to former state officers and employees, provides: “No retired, dismissed, separated, or formerly employed person of any state agency or department employed under the state civil service or otherwise appointed to serve in state government may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment.” Second, there is a one-year prohibition on former policy making officials contracting with their prior agencies. This prohibition establishes a one-year moratorium on any former state officer or employee, entering into a contract with his or her former agency, if the covered official held a policymaking position with the agency in the same general subject area as the proposed contract within 12 months prior to his or her departure from state government. (Section 10411, subd.(b).)

Section 1090, because your request does not provide specific information regarding a government contract and your possible financial interest in the contract, we do not deem this letter to meet the requirements to permit the requester to offer the letter into evidence in a Commission enforcement proceeding or criminal prosecution regarding Section 1090. (See Section 1097.1(c)(5).)

Finally, pursuant to Section 1097.1(c)(4), we have forwarded your request to the Attorney General's Office and the Sacramento County District Attorney's Office concerning potential issues raised under Section 1090 and we did not receive a written response from either entity.

QUESTIONS

1. What restrictions are placed on you under the Act for working on any Office of Systems Integration ("OSI") contracts in effect, in the process of being procured, or in the process of being implemented during your tenure as Chief Deputy Director of OSI and for what period of time will those limitations be in effect?
2. Under the Act, in what circumstances would you be able to work with or advise any of the vendors that OSI is working with or any of the other state departments under the direction and control of the California Health and Human Services Agency ("CHHSA")?
3. What are your restrictions for working with advocates or non-profit organizations that may be stakeholders in OSI or CHHSA projects? What are your restrictions for working with advocates or non-profit organizations that may have contracts with any vendors of OSI or CHHSA?

CONCLUSION

1. To the extent that you worked on creation, formation, application, drafting or awarding, and implementation and management of contracts with technology companies, businesses and other external consultants while at OSI, the Act's permanent ban would prohibit you from working on the performance or implementation of those contracts after leaving state service. However, the Act would not prohibit you from working on new proceedings, including new contracts.

Under the Act's one year ban, you are prohibited, for a period of twelve months after you left OSI, from making an appearance or communication before OSI or any agency under the direction and control of CHHSA, on behalf of any new employers if the appearance or communication is for the purpose of influencing any legislative or administrative action or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

The Act's ban on influencing prospective employment prohibits you from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement.

2. As a former agency official, you may (without violating the Act's one year ban) draft proposals on behalf of vendors who have contracts with OSI, or any other state departments under the direction and control of CHHSA, whose contracts you did not have participation in, including creation of, formation, application or drafting of the contracts. You may represent these vendors so long as you are not identified in connection with these vendors' efforts to influence administrative or legislative actions, or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Similarly, you may use your expertise to advise these vendors on the procedural requirements, plans, or policies of OSI or CHHSA, as long as you are not identified in the vendors' efforts to influence your former agencies. You may also draft proposals on your clients' behalf and advise your clients on the procedural requirements, plans, or policies of OSI and CHHSA as long as you are not identified in connection with your clients' efforts to influence administrative actions.

3. You may have a financial interest under Section 1090 in nonprofit groups that you have an agreement with for future consulting services if they would be named as subcontractors or would otherwise benefit from the contracts before OSI. However, we do not have enough information to make this type of determination. Thus, if a particular contract comes before OSI in which a future or current nonprofit client of yours is involved, you should seek advice on whether you have a financial interest in the contract and to what extent, if any, you can participate in the making of the contract.

FACTS

You have served as the Chief Deputy Director of OSI within CHHSA from September 2011 to the present. You were also interim Director of OSI from January 1, 2014 to March 17, 2014.

The OSI plans, procures, manages, and delivers technology systems that support the delivery of health and human services to Californians. As Chief Deputy Director, you had signatory authority for contracts entered by the Office. During your tenure, OSI had contracts with various technology and other companies including: IBM, Xerox, Hewlett Packard, Accenture, Oak Technology Services, AgreeYa Solutions, Cambria Solutions, Quantum Consulting Services Inc., Vision Integration Professionals (VIP), Kearn Application Systems Design, Performance Technology Partners LLC, MK Partners Inc., Nelson, Mullins, Riley & Scarborough LLP.

During this same time you worked at OSI, you also served as the Agency Information Officer for CHHSA. The Agency Information Officer is tasked with guiding the development of

the agency's structure and operational blueprint, including its information technology systems, but the position does not have authority to approve contracts or specify technology vendors. The OSI portfolio that you managed comprised a number of projects with multiple contractors.

You are planning to retire from state service effective June 9, 2014 and start your own consulting firm. You plan to offer advisory, but not representation services. For example, you are planning to offer strategic perspective and guidance on positioning of products and services for technology firms to the public sector (including the State of California). You are also planning to offer innovation strategies and organizational change management services to the public, private, and non-profit sectors.

There is a nonprofit group that you intend to work with after you retire. This group works primarily with counties and one other state agency and is very active in the health and human services area in other states. This non-profit group is very interested in one of the projects that is currently being procured by OSI and may be involved as a subcontractor to that contract, should the vendor it is partnered with be selected for the project.

You wish to know what limitations are imposed on you with regard to working on any OSI projects with existing contracts, projects that are in the process of being implemented, and projects that are in the process of being procured. You also wish to know if there are any restrictions you should be aware of with regard to advising vendors to OSI, the CHHSA or any other state departments under the direction and control of CHHSA. Lastly, you ask if there are any restrictions on you working with nonprofit organizations that are stakeholders in OSI or CHHSA projects, and that may have contracts or agreements with vendors of either agency.

ANALYSIS

I. Post-Governmental Employment Restrictions under the Act

Public officials who leave state service are subject to two types of post governmental employment provisions under the Act, colloquially known as the "revolving door" prohibitions. In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment, or have any arrangement concerning employment. (Section 87407; Regulation 18747.)

The One-Year Ban

Section 87406 of the Act prohibits a state employee who files or should be required to file a Statement of Economic Interests (known as a "designated employee") from communicating, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action or influencing certain proceedings. (Section 87406, Regulation 18746.1.)

As Chief Deputy Director of the OSI and as Agency Information Officer for CHHSA, you are a designated employee. Therefore, for one year after leaving OSI and CHHSA, you may not communicate with your former agency in an attempt to influence any transaction involving legislative or administrative action³ or other discretionary act – including contracts.⁴

You may, however, draft proposals on your clients' behalf and advise your clients on the procedural requirements, plans, or policies of OSI and CHHSA so long as you are not identified in connection with your clients' efforts to influence administrative action.

For instance, we have advised that a former agency official may draft proposals on a client's behalf to be submitted to the agency so long as the former employee is not identified in connection with the client's efforts to influence administrative action. (*Williams Advice Letter*, supra.) Similarly, a former agency official may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the official's former agency so long as the employee is not identified with the employer's efforts to influence the agency. (*Perry Advice Letter*, No. A-94-004.)

Provided that your work on OSI projects or CHHSA administered projects does not involve appearances or communications before your former agency or it falls within the exception of Regulation 18746.1(b)(5)(A)⁵, the one year ban does not apply. You may draft proposals and advise clients on the procedural requirements, plans, or policies of OSI or CHHSA so long as you are not identified with your clients' efforts to influence these agencies.

However, you may *not* appear before or communicate with OSI, CHHSA or before a state agency whose budget, personnel and other operations are subject to the control of these

³ For purposes of Section 87406, the Act defines "administrative action" as the following: "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding . . ." (Section 82002(a).) "Legislative action" is defined as the "drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity." (Section 82037)

⁴ Not all communications to a former state administrative agency employer are prohibited by the one year ban. The ban extends only to those communications made for the purpose of influencing any legislative or administrative action, or influencing any discretionary act "involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property." (Section 87406(d)(1); Regulation 18746.1(b)(5).) Communications restricted by the one year ban include any formal or informal appearance or oral or written communication made to influence legislative or administrative action or any action on a proceeding. (Section 87406(d)(1).) These communications include, but are not limited to, conversing directly or by telephone, corresponding by writing or e-mail, attending a meeting, and delivering or sending any communication. (Regulation 18746.2(a).) A communication is considered to be for the purpose of influencing legislative or administrative action "if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding." (Regulation 18746.2(a).)

⁵ Under this exception, you may appear before or communicate with the CHHSA for the purpose of administering, implementing, or fulfilling the requirements of a pre-existing contract or project, so long as the services do not involve the issuance, amendment, awarding, or revocation of a permit, license, agreement or contract, or the sale or purchase of goods or property. (Regulation 18746.1(b)(5)(A); *Quiring Advice Letter*, No. A-03-272; *Hanan Advice Letter*, No. I-00-209.)

agencies that you worked for⁶ regarding the issuance, amendment, or awarding of *any contracts, permits, licenses or grants or sales or purchase of goods or property* for a period of one year after you leave state service. This includes new or amended contracts that vendors may have with OSI or CHHSA to provide, procure, manage, or deliver technology systems.

The Permanent Ban

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while a state administrative official at OSI or any other state agency. (Sections 87401 and 87402.) Thus, a public official may never “switch sides” in a proceeding after leaving state service.

Sections 87401 provides:

“No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding⁷ if both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.
- (b) The proceeding is one in which the former state administrative official participated.” (Section 87401.)

Section 87402 provides:

“No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.”

As the Chief Deputy Director of the OSI and as Agency Information Officer for CHHSA, you are a state administrative official for purposes of the Act. Therefore you are subject to the permanent ban once you leave state service.

⁶ Regulation 18746.1(b)(6).

⁷ Section 87400(c) defines “judicial, quasi-judicial or other proceeding” to include: “. . . any proceeding, application, request for a ruling or other determination, *contract*, claim, controversy, investigation, charge, accusation, arrest or *other particular matter involving a specific party or parties* in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.” (Emphasis added.)

(Section 87400(b).) To determine if the permanent ban applies to your situation you would need to identify the proceedings in which you participated⁸ while employed by the state.

For instance, among your decisionmaking responsibilities at OSI, you reviewed, commented on and made decisions to approve or disapprove various contracts involving the agency's information systems. In your work with contracts involving OSI's information systems, you have been involved in contractual matters involving a specific party or parties before a state administrative agency. Therefore, these contracts with vendors, businesses and other external consultants are considered a "proceeding" under the Act's permanent ban on switching sides in a judicial, quasi-judicial or other proceeding to which the permanent ban will apply under Sections 87400 and 87401. (*Walter Advice Letter*, No. I-06-078; *Cooper Advice Letter*, No. A-99-094.) Accordingly, you may not represent or advise any other party on contracts you have participated in while employed in state service. (See Regulation 18741.1(a)(4).)

However, the Act would not prohibit you from working on new proceedings, including new contracts. For instance, we have advised that the permanent ban prohibition would not prevent an official who worked on the bid and procurement process of a project from participating in the implementation of the contract. (*Hotaling Advice Letter*, A-11-013.) In your case, having worked on the implementation phase of some of the contracts you would not be able to work on implementation in the private sector.

Influencing Prospective Employment:

The ban on influencing prospective employment prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates⁹ to a prospective employer while negotiating¹⁰ or after reaching an employment arrangement.¹¹ (Section 87407; Regulation 18747.) OSI and CHHSA are state government agencies, and as an employee working for these agencies, you are subject to this ban.

⁸ "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering legal advisory opinions to departmental or agency staff that do not involve a specific party or parties. (Section 87400(d).)

⁹ Regulation 18747(b) provides that a governmental decision "directly relates" to a prospective employer if the public official knows or has reason to know that "(1) the prospective employer is 'directly involved' in the decision, as defined in 2 Cal. Code Regs. section 18704.1(a); or (2) It is reasonably foreseeable that the financial effect of a decision on a prospective employer is material . . ."

¹⁰ "A public official is 'negotiating' employment when he or she interviews or discusses an offer of employment with an [potential] employer or his or her agent." (Regulation 18747(c)(1).)

¹¹ "A public official has an 'arrangement' concerning prospective employment when he or she accepts an employer's offer of employment." (Regulation 18747(c)(2).)

Therefore, if you are negotiating prospective employment as a consultant with any of the companies that do business with OSI or CHHSA, and if you have sufficiently discussed the prospect of future employment with these companies to be considered part of a “negotiation,” you would be prohibited, pursuant to Section 87407, from making, participating in the making, or using your official position with OSI or CHHSA to influence any governmental decisions with a reasonably foreseeable material financial effect on these companies.

II. Government Code Section 1090

You have not presented sufficient details about your financial interest or involvement in any government contracts to be specifically analyzed under Section 1090. Therefore, we can only provide general information at this time concerning Section 1090. Discussed below is the analysis that you can follow to determine whether you have an issue under Section 1090 and what your duties are if you should have such an interest.

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig, supra*, at 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

We employ the following six-step analysis to determine whether an official has a disqualifying conflict of interest under Section 1090.

Step One: Are you subject to the provisions of Section 1090?

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” As a high ranking state official, you are covered by this prohibition. (See, e.g., *Thomson, supra*, at p. 645; *City Council v. McKinley* (1978) 80 Cal.App.3d 204, 213.)

Step Two: Does the decision at issue involve a contract?

To determine whether a contract is involved in the decision, one may look to general principles of contract law (84 Ops.Cal.Atty.Gen. 34, 36 (2001); 78 Ops.Cal.Atty.Gen. 230, 234 (1995)), while keeping in mind that “specific rules applicable to Sections 1090 and 1097 require

that we view the transactions in a broad manner and avoid narrow and technical definitions of 'contract.'" (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.)

Here, you have stated you have the authority to approve contracts with OSI but have not specified a decision currently at issue involving approval of a specific contract.

Step Three: Are you making or participating in making a contract?

Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft, supra* at p. 569.)

Most notably, as potentially applicable to your situation, is the case and rationale of *Stigall v. City of Taft, supra*. As indicated, participation in the making of a contract is defined very broadly. On this basis, although an official or employee may resign from his or her position, that resignation may not be sufficient to avoid a Section 1090 violation when the person has been involved in the contracting process. In *Stigall*, the court concluded that where a city councilmember had been involved in the preliminary stages of the planning and negotiating process on a city contract, but had resigned from the council prior to its vote on the contract, the councilmember had been involved in the making of the contract. (*Id.* at pp. 570-571.) Similarly, in *City Council v. McKinley* (1978) 80 Cal.App.3d 204, the court followed this reasoning and stated:

If the date of final execution were the only time at which a conflict might occur, a city councilman could do all the work negotiating and effecting a final contract which would be available only to himself and then present the matter to the council, resigning his office immediately before the contract was executed. He would reap the benefits of his work without being on the council when the final act was completed. This is not the spirit nor the intent of the law which precludes an officer from involving himself in the making of a contract.

(*Id.* at p. 212; 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan]; 66 Ops.Cal.Atty.Gen. 156 (1983) [county employees could not propose agreement for consultant services, then resign, and provide such consulting services].)

As a high ranking designated employee of OSI charged with approving technology systems contracts, we assume you would be participating in the making of several contracts. Thus, if a particular contract comes before OSI in which a current client of yours or one that has made you an offer of employment is involved, you should seek advice on whether you have a financial interest in the contract and to what extent, if any, you can participate in the making of the contract. Furthermore, if you participated in making a particular contract during your state

service and later desire to work under that contract after leaving state service, you also should seek advice as to whether this is permissible under Section 1090.

Step Four: Do you have a financial interest in the contract?

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest” (*People v. Honig, supra*, at p. 333), and officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson, supra*, at pp. 645, 651-652; see also *People v. Vallerger* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

More recently, in *Eden Township Healthcare Dist. v. Sutter Heath* (2011) 202 Cal.App.4th 208, the court of appeal held that “to be prohibited under section 1090, the public official’s financial interest must be related to the contract.... The purpose of the prohibition is to prevent a situation where a public official would stand to gain or lose something *with respect to the making of a contract* over which in his official capacity he could exercise some influence.” (*Id.* at 225 (emphasis in original; internal citation and quotations omitted).) In analyzing the “financial interest” element of Section 1090, the court noted that in prior cases where a prohibited conflict was found, “the party who was found to have had a prohibited financial interest received a tangible benefit that arose out of the contract at issue.” (*Id.* at 226.) Importantly, the court rejected the notion that the “mere *prospect*” that the official’s judgment “will be colored because he or she receives income from the party with whom the official’s agency is contracting” is sufficient to establish a prohibited financial interest under section 1090. (*Id.* at 227 (emphasis in original).) It is important to first determine “whether the official receives any direct or indirect benefit from the agreement.” (*Id.*) Therefore, the court held that “if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract....” (*Id.* at 228.)

In your present situation, you may have a financial interest in some of the technology companies’ contracts, if for instance, you have an agreement with, or have negotiated an agreement to provide future consulting services as the result of the award of OSI contracts to these companies, or if you work under one of these contracts after leaving state service. You may also have a financial interest in nonprofit groups under certain circumstances. For instance, you may have a financial interest if you have an agreement with a nonprofit group for future consulting services if they are named as subcontractors or would otherwise benefit from the contracts before OSI.

Step Five: Does either a remote interest or non-interest exception apply?

Assuming a prohibited financial interest in a government contract is found, as a general rule, when Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).) However, the Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091, or a "noninterest," as defined in Section 1091.5.

If there is a "remote interest," the contract may be made if (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the officer abstains from any participation in the making of the contract. (Section 1091(a); 88 Ops.Cal.Atty.Gen. 106, 108 (2005); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).) If a "noninterest" is present, the contract may be made without the officer's abstention, and generally a noninterest does not require disclosure. (*City of Vernon v. Central Basin Mun. Water Dist.* (1999) 69 Cal.App.4th 508, 514-515; 84 Ops.Cal.Atty.Gen. 158, 159-160 (2001).)

Since we do not have specific details regarding the types of contracts you have personally and substantially worked on and in which you have a financial interest, it would not be productive at this point to recite each of the provisions in which there is either a "noninterest" or "remote interest." We recommend that you seek further advice should you have a concern regarding a specific vendor and are faced with decisions regarding that particular contract.

Step Six: Does the rule of necessity apply?

In limited circumstances, a "rule of necessity" has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (88 Ops.Cal.Atty.Gen. 106, 110 (2005).) Under the rule of necessity, a government agency may acquire an essential service, despite the existence of a conflict, when no source other than that which triggers the contract is available; the rule "ensures that essential government functions are performed even where a conflict of interest exists." (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal. App. 3d 311, 322.)

You have provided no facts to suggest the "rule of necessity" would apply in the present situation.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl